AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111         Page 7
Serial Number: 10/748,343         Dkt: 1370.121US2
Filing Date: December 29, 2003
Title: METHOD FOR TRACKING TRANSMISSION STATUS OF DATA TO ENTITIES SUCH AS PEERS IN A NETWORK

## REMARKS

This responds to the Office Action mailed on <u>August 2, 2007</u>.

Claims 1-23 have been amended to include the limitation that the device is a routing device. Basis for this amendment can be found throughout the detailed description and drawings as well as in claim 23 prior to the current amendments.

### *Claim Objections*

Claim 2-8, 10-15, 16-20, 22 and 23 were objected to and the Examiner kindly provided suggested amendments to improve the clarity of the claims. These claims have been amended and it is submitted that this objection hads been overcome. It will be noted that the proposed amendment to claim 3, line 5 to replace "a local version number" with "the local version number" has not been made. These local version numbers are referenced in more detail in claims 4 and 5 and it is submitted that the language of claim 3 is clear.

### *§102 Rejection of the Claims*

Claims 1-4, 12, 14, 15, 16, 17, 21, and 23 stand rejected under 35 U.S.C. § 102(b) for anticipation by Branson et al. (U.S. 6,425,126).

Applicants respectfully traverse this rejection for the reasons set out below, and ask the Examiner for reconsideration.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." <u>Verdegaal Bros. v. Union Oil Co. of California</u>, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

It is submitted that Branson et al. is unrelated to the invention as claimed in the present application. Branson et al. relates to "[a] method and apparatus for **synchronizing software between computers**. A software fix manager compares a **preferred software inventory** with a software inventory from a computer that is to be synchronized and, from this comparison, creates

a number of **software product synchronizations**. An update manager uses the software fix list

to apply software product synchronizations to the computer." (See abstract).

> The following extract from Branson et al. clearly identifies the scope of the disclosure:
> "Before proceeding to detailed discussions of the embodiments of the current invention, it is
> beneficial to discuss terminology that is used herein. **A "software product" is a release of**
> **software for a computer system.** A software product could be an operating system, financial
> software, office software, an internet browser, text-editing software, a child's game, etc. In
> addition, a software product could be drivers for printers, video cards, sound cards, etc. A
> "release" of a software product is intended to be complete. Releases generally have new version
> numbers that have years or whole numbers associated with them, such as Version 97 or Version
> 2.0. **A software fix is a permanent or temporary change or addition to the software product.**
> **General terms for these types of software fixes include an "update" or a "patch."** Updates
> are usually permanent fixes for software products and are minor changes to the software product,
> while patches are usually temporary pieces of software that fix one or more problems. A more
> permanent fix for the problem usually follows the patch. For some operating systems (i.e.,
> OS/400), the term "permanent" means that the fix is installed permanently and cannot be
> removed, while the term "temporary" means that the fix may be removed or uninstalled.

> In general then, **"software product" is intended to indicate a working version of a software**
> **product, while a "software product fix" is intended to indicate additions or changes to the**
> **software product that are not a complete version of the software product.** The term
> **"software product synchronization" encompasses installing a software product fix,**
> **attempting to remove and removing a software product fix, installing a software product, or**
> **uninstalling a software product.**

Clearly, Branson et al. is totally unrelated to routers and tracking a transmission status of

one or more data elements as claimed in the context of claim 1. In fact the terms "router" or

"routing" are not mentioned at all in Branson et al. Accordingly it is submitted that the following

limitations of claim 1 are not described or even suggested in Branson et al.:

> providing a list including one or more routing devices and one or more data elements, wherein
> each data element includes a routing entry in a routing table;

processing the list to determine a data element of said one or more data elements to transmit to a routing device of one of the one or more routing devices; and

upon successfully transmitting the data element to the routing device, adjusting the list so that the list indicates that the routing device has received the transmitted data element.

In view of at least the remarks above it is submitted that claim 1 is allowable. As claim 1 is allowable, dependent claims 1-13 are also allowable.

Claim 14 includes the limitation of "providing a list including one or more routing devices and one or more data elements, wherein each data element includes a routing entry in a routing table." In view of the remarks above, it is submitted that this limitation is neither described nor suggested in Branson et al.. Accordingly, claim 14 is allowable. As claim 14 is allowable, dependent claims 15-22 are also allowable.

Claim 23 includes the limitation of "a module for providing a list including one or more routing devices and one or more data elements, wherein each data element includes a routing entry in a routing table." In view of the remarks above, it is submitted that this limitation is neither described nor suggested in Branson et al.. Accordingly, claim 23 is also allowable.

## §103 Rejection of the Claims

Claims 5, 6, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Branson et al. (U.S. 6,425,126) in view of Kaneko (U.S. 6,505,347).

Claims 7-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Branson et al. (U.S. 6,425,126) in view of D'Souza (U.S. 5,666,523).

Claims 10, 11, 13, 19, 20 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Branson et al. (U.S. 6,425,126) in view of Fujiwara (U.S. 6,301,710).

As discussed above claims 1, 14, and 23 are allowable. Accordingly, as claims 10, 11, 13, 19, 20 and 22 are dependent upon allowable claims 1 and 14, they are also allowable. It should

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111          Page 10
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also be noted that Kaneko, D'Souza and Fujiwara are totally unrelated to network routing technology. It is thus also submitted that these references are unrelated to the invention claimed in the present application.

## *Reservation of Rights*

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

## CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 408-278-4041 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date ___November 28, 2007___     By _____
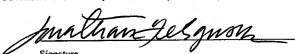                                     Garth Vivier
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 28th day of November 2007.

JONATHAN FERGUSON _____          _____
Name                                               Signature